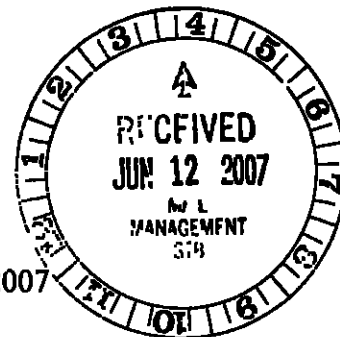


LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1020 N STREET NW
WASHINGTON DC 20036-1601

(202) 203-4152
FAX (202) 331-8330
e-mail xccgc@worldnet.att.net

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June 12, 2007

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JUN 12 2007

Part of
Public Record

Dear Secretary Williams:

This refers to Finance Docket No. 35038, Tulare Valley Railroad Company-Feeder Line Acquisition-A Line of San Joaquin Valley Railroad Co., and to the letter filed by the Union Pacific Railroad ("UP") on June 8, 2007.

It well may have been inadvertent, but UP's letter tells only half the story..

It is true, as the UP states in its letter, that, pursuant to the Decision of the Interstate Commerce Commission ("ICC") in Finance Docket No. 31993 (Sub-No. 1), San Joaquin Valley Railroad Co -Acquisition and Lease Exemption-Southern Pacific Transportation Company, served October 4, 1993, UP's predecessor in interest, Southern Pacific Transportation Company ("SP") sold the track and rail assets of the subject Exeter Branch and additional railroad lines to the San Joaquin Valley Railroad Co. ("SJVR") and leased the underlying rights-of-way to the SJVR. The ICC in its Decision stated that it had insufficient information to permit it to determine whether the UP would continue to have a common carrier obligation over these lines after the sale to SJVR. It advised SP to file a petition for declaratory order to clarify the issue. As UP correctly notes in its letter, no such petition was ever filed

Not one year later, in Docket No. AB-398 (Sub-No. 3X), SJVR petitioned for an exemption to abandon a 4.5-mile segment of the Clovis Branch which it had purchased from SP. In Docket No. 12 (Sub-No. 179X) petition for an exemption to abandon any residual common carrier obligation it might have retained in regard to the same 4.5-mile segment of the Clovis Branch. SP concurrently moved to dismiss the exemption petition for lack of ICC jurisdiction, contending that SJVR previously acquired SP's common carrier obligation in the

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preceding year's proceeding

By its Decision in Docket No. 12, (Sub-No. 179X), Southern Pacific Transportation Company—Abandonment Exemption—In Fresno County, CA, served May 8, 1995, the ICC granted SP's motion to dismiss. The ICC found:

SP submitted a copy of the Sale Agreement and the Amended and Restated Lease Agreement (Lease Agreement). In the Sale Agreement, SP agreed to sell to SJVR its interest in the improvements, track, track support structures, and the incidental interest in the sale and lease branches. SP also agreed to lease to SJVR its interest in the real estate underlying the sale and lease branches in the Sale Agreement. SP did not reserve, nor did SJVR grant to SP, any right or easement to continue to provide rail freight service over the sale and lease branches of the line.

The Lease Agreement contains no provision that would permit SP to reenter the property or perform rail common carrier service or to interfere with the operations of SJVR. SP is not permitted to require SJVR to vacate the property unless and until SJVR receives appropriate abandonment authority from the ICC or any successor agency. SP is precluded from interfering with SJVR's exclusive freight railroad operations and reserves to itself the right to use the underlying real estate only for nonrailroad purposes.

Based on our review of the evidence, we conclude that SP sold, and SJVR purchased, the Clovis Branch and thus assumed the accompanying common carrier obligation.

In a footnote at the conclusion of the preceding paragraph, the ICC stated:

We note that SP retained only the right to prevent the assignment by SJVR of the common carrier obligation to another class I rail carrier. Section 20.04 of the Agreement. This is not a sufficient interference with SJVR's common carrier obligation to cause us to find that SP retained a common carrier obligation with respect to the Clovis Branch. All other provisions of the Agreement establish that SP's rights, as owner of the underlying land, are expressly made subject to SJVR's common carrier obligation.

Thus, it is evident that UP merely owns the right-of-way of the Exeter Branch as realty. UP is totally divorced from the rail operations of SJVR which is the rail carrier that the Tulare Valley Railroad Company seeks to acquire by its Feeder Line Application. The effect of UP's letter of June 8, 2007, claiming to be the "owning railroad", of the Exeter Branch appears to be a

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repudiation of its earlier representations to the ICC. When it comes to the Exeter Branch, UP is no more a railroad than the State of Maine. See, Maine, DOI-Acq. Exemption, Maine Central R. Co., 8 I.C.C.2d 835 (1991). UP's letter, accordingly, warrants rejection, pursuant to 49 C.F.R. 1104.10.

Ten copies of this letter are enclosed to permit your circulation of it. An additional copy of the letter is enclosed for you to stamp to acknowledge your receipt of it and to return to me via the messenger.

I certify that I have served copies of this letter upon UP and SJVR by facsimile transmitting copies of it to their attorneys.

Sincerely yours,


Fritz R. Kahn

cc: Robert T. Opal, Esq (402) 5501-0132
Louis E. Gitomer, Esq. (410) 332-0885.